IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.5181 of 2005

Date of Decision: 26.10.2006

M/s Bhaskar Ceramics Pvt. Ltd.

Petitioner

versus

State of Punjab and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Ms.Radhika Suri, Advocate for the petitioner
Shri G.S.Sandhawalia, Advocate for respondent No.2

Jasbir Singh, J.

Petitioner has filed this writ petition under Article 226 of the Constitution of India, by making the following prayers:-

1. *That the respondent- Corporation be directed to give benefit to the petitioner under one time settlement policy, advertised by respondent No.2 (Annexure P/13).*
2. *That directions be issued to the respondents to allow the petitioner to sell the residential house with a view to pay 10% of the amount, in dispute, which is a pre condition to get benefit under one time settlement scheme.*

3. *That the directions be issued to the respondents to consider the petitioner as a viable sick unit as per Industrial Policy, 2003.*

It is apparent from the records that the petitioner had availed a loan facility of Rs.38.70 lac. Loan amount was disbursed to it in the year 1997. House in question was mortgaged as a co-lateral security to secure repayment of the loan amount. The petitioner had paid only an amount of Rs.8 lac and at present, more than Rs.48 lac is due from it to respondent No.2.

In the written statement, it has been stated by respondent No.2 that no benefit of the Policy dated 29.12.2004 (Annexure R2/1) can be extended to the petitioner as the petitioner is not eligible under that scheme to get any benefit. Eligibility clause, to claim benefit under that scheme reads thus:-

"ELIGIBILITY

- *All cases in possession with PFC as on 30th June 2004 excluding units resumed (after sale), with official liquidator, purchased under Section 31, sold but execution of sale agreement is pending.*
- *Advertised at least once."*

It is not in dispute that the property of the petitioner was taken in possession only on 24.8.2004 by invoking provisions of Section 29 of the State Financial Corporation Act, 1951 (in short the Act) and thereafter it had not been advertised for sale, even once. As is apparent from reading of document Annexure R2/1, to get benefit under said Policy, it was necessary that possession of the mortgaged property would have been taken on or before 30.6.2004 and it might have been advertised for sale atleast once.

Admittedly, the petitioner did not fulfill the criteria laid down under the said Policy to get any benefit. Furthermore in this writ petition, challenge has not been laid to the Policy (Annexure R2/1), referred to above.

Contention of counsel for the petitioner that if the Corporation had taken over possession of the mortgaged property immediately, when unit has become sick, the petitioner would have been in position to get benefit of the policy, is liable to be rejected. *One time settlement scheme* was notified only on 29.12.2004 and cut off date was fixed to get relief under the same. This Court feels that the same was justified and no motives can be attributed to respondent No.2, in not taking action immediately, when the petitioner had become defaulter by not returning loan amount to respondent No.2.

Next prayer of the petitioner that it be allowed to sell the mortgaged property to pay 10% of the outstanding amount, which is mandatory to get benefit under the Scheme, is also liable to be rejected. As per Policy, under which the petitioner is seeking relief, to pay 10% of the amount due, is a condition precedent. Petitioner has failed to comply with the same. Under these circumstances, respondent No.2 is justified in selling that property. It is apparent from the records that earlier also, the petitioner made an attempt to frustrate efforts of respondent No.2 to take over possession of the mortgaged property, by filing CWP No.9843 of 2002. The above said writ petition was disposed of by this Court on 25.9.2003. Relevant portion of the order reads thus:-

> *"iv) We would have decided the issue raised by the parties by passing a detailed order but the necessity of doing so has been obviated because during the course of arguments, learned*

counsel for the parties agreed that the writ petition may be disposed in the following terms:-

1) *Within a month from today, the petitioner shall pay 25% of the total amount due as on today i.e. Rs.30.82 lacs Payable under the One Time Settlement Scheme and also furnish a written undertaking to the Managing Director of the Corporation (Respondent No.1) to pay the balance amount in 12 equal monthly installments.*
2) *As an when the Government releases the subsidy sanctioned to the petitioner on 9 March 2000, the amount shall be paid to the petitioner after adjusting outstanding dues of the respondent No.1.*
3) *If the petitioner fails to comply with condition No.1 above, the respondent No.1 shall be entitled to take possession of its unit in pursuance of notice Annexure P/8 issued under Section 29 of the State Financial Corporation Act, 1951."*

The petitioner failed to make payment of the amount due as directed vide order, referred to above. Thereafter, possession of the mortgaged property was taken over by respondent No.2 by invoking provisions of Section 29 of the Act, in the month of August 2005. By not complying with the order dated 25.9.2003, the petitioner has proved that it was not serious in making repayment of the loan amount, rather it is interested only in delaying payment of the said amount.

It is necessary to mention here that when this writ petition was filed, the petitioner has failed to make any reference to the

order passed by this Court on 25.9.2003 in CWP No.9843 of 2002. By doing so, it has made an attempt to over-reach the Court. Relief, under Articles 226 and 227 of the Constitution of India, is discretionary in nature and such like person, who has concealed vital fact from this Court, is not entitled to get any relief.

So far as prayer of the petitioner, to declare it as viable sick unit is concerned, for the said relief, the petitioner had earlier filed CWP No.3514 of 2005 and the same was disposed of by this Court on 10.3.2005, by passing the following order:-

> *"Learned counsel for the petitioner states that the petitioner shall approach the Director, Industries Punjab for expeditious disposal of the revival package submitted by the petitioner, vide communication dated October 29, 2004.*
>
> *The petition is disposed of accordingly with the observation that if the package is disposed of favourably to the petitioner, necessary steps in this regard shall be taken by the petitioner and if any adverse order is passed, he shall be at liberty to challenge the same before the appropriate forum."*

Thereafter, the petitioner has approached the competent authority and the matter is still pending, as such, qua that request also, no relief can be granted to the petitioner in this writ petition.

Furthermore, it has specifically been stated by respondent No.2 that a certificate, declaring the petitioner as a viable sick unit, cannot be granted to it because the petitioner has failed to furnish audited balance sheets for the last five years alongwith profitability so that opinion can be formed regarding eligibility of the petitioner for rehabilitation. It has further been said that the petitioner has shown interest in the books but not

paid it to the Corporation in order to erode its net worth and this reveals that the petitioner is a willful defaulter and not entitled to get any relief under the RBI Scheme.

Counsel for the petitioner has failed to show anything in this regard, which may necessitate any interference by us at this stage.

In view of facts mentioned above, this writ petition fails and the same is dismissed.

(Jasbir Singh)
Judge

October 26, 2006 **(Pritam Pal)**
gk **Judge**